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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARTHUR A. SCHEIN, PAUL ARON, DAN A. DEMETER,
FARAZ ATAIE, FRANK BAMBERGER, JOHN MCGLYNN,
FLORENCE MUSALO, MARGOT PAUL, JOHN POPLIZIO, LUCILA
UCHIE RICO, MICHAEL TSIEN, and MICHAEL YORKE

Appeal 2007-3392
Application 09/737,754
Technology Center 3600

Decided: September 25, 2008

Before HUBERT C. LORIN, ANTON W. FETTING, and JOSEPH A.
FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 21 and 23-52. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a method and related apparatus for a global standard messaging service which is an aid to permit rapid communication among worldwide users of the service. (Specification 1:21-23.)

Claim 21, reproduced below, is representative of the subject matter on appeal.

21. A global communications network for use by a financial institution, comprising:
a plurality of distribution points for allowing an end user to send an electronic message or request;
an integration facility for controlling and routing the electronic message or request, wherein the integration facility comprises at least one first logical router for determining whether the electronic message or request is simple or complex; and
at least one service provider for processing the electronic message or request.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Yanai	US 5,544,347	Aug. 6, 1996
Richards	US 5,995,921	Nov. 30, 1999

Examples of Using MQSeries on S/390, RISC System/6000, AS/400 and PS/2 3-75 (1st Ed., IBM Corp., Jun. 1994)(hereinafter referred to as MQSeries.)

The following rejections are before us for review.

1. Claims 21, 23-31, 33-38, and 40-48 stand rejected under U.S.C. § 102(b) as being unpatentable over MQSeries.
2. Claim 32 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over MQSeries in view of Richards.
3. Claims 39 and 49-52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over MQSeries in view of Yanai.

ISSUE

The anticipation issue before us is whether Appellants have shown that the Examiner erred in rejecting claims 21, 23-31, 33-38, and 40-48 under 35 U.S.C. § 102(b) as anticipated by MQSeries. This anticipation issue turns on whether MQSeries expressly or inherently discloses a logical router for determining whether the electronic message or request is simple or complex.

The second issue is whether Appellants have sustained their burden of showing that the Examiner erred in rejecting claim 32 under 35 U.S.C. § 103(a) as being unpatentable over MQSeries in view of Richards.

The third issue is whether Appellants have sustained their burden of showing that the Examiner erred in rejecting claims 39 and 49-52 on appeal as being unpatentable under 35 U.S.C. § 103(a) over MQSeries in view of Yanai.

FINDINGS OF FACT

1. The Examiner found:

MVB2 teaches capability for determining simple and complex messages. MVB2 responds to the inquiry from MVB1 either from batch processing, immediate delivery, send a query to MVB3 or to MVB4 for further processing. Looking at this figure itself, it would have been obvious to one of ordinary skill in the art that MVB2 is capable of determining whether the message is simple or complex as claimed by the appellant as their invention.

(Answer 14-15.)

2. MQSeries discloses that

[t]he Credit Check sample application is a suite of CICS programs written in COBOL. The application demonstrates a method of assessing the risk when bank customers ask for loans. The application shows how a bank could work in two ways to process loan requests:

- When dealing directly with a customer, the bank staff can have immediate access to account and credit-risk information
- When dealing with written applications, the bank staff can submit a series of requests (batch) for account and credit-risk information, and deal with the replies at later time.

(MQSeries 33.)

3. MQSeries discloses that

[t]he user interface process selects between immediate and batch processing by specifying a different reply-to-queue in the inquiry message. It also sends the inquiry messages with different priorities to make sure immediate inquiries are processed ahead of batch inquiries.

(MQSeries 33.)

4. MQSeries discloses that the MVB1 is a module having the following attributes:

Module Name CSQ4CVB1
Environment CICS/ESA Version 3.3; COBOL II
CICS Transaction MVB1
Description This program provides the user interface function for the Credit Check sample. It demonstrates the basic entry into an application and how to kick off the messaging process.
Function Handles the screen interface to obtain the account information from the user. Generates the initial message that triggers the actual Credit Check application procedures. Retrieves the reply from the application and displays results on the screen.

(MQSeries 35.)

5. MQSeries discloses that MVB2 router

[p]rovides the application manager function for the Credit Check sample.
Demonstrates the decomposition of a business application into single units of work to be executed in parallel.
Function Reads the message created by

CSQ4CVB1 and decomposes the request implied by this message into two other request messages. Puts the two new messages into their respective queues.
Waits for the replies (several) from the processes that handle the decomposed messages and re-composes them into the reply to CSQ4CVB1.

(MQSeries 35.)

6. MQSeries discloses that the MVB4 server

[p]rovides the distribution process function for the Credit Check sample.
Demonstrates the distribution of a query message to a number of queues, whose names are obtained from a namelist. In addition, demonstrates the notification of the originator, through its reply queue, of the number of messages that have been distributed - and therefore, of the number of replies the originator (MVB2) should expect.
Reads the message created by CSQ4CVB2 and retrieves a list of queues from the namelist.
Writes triggering messages to each queue named in the namelist to kick off the MVB5 transaction.
Writes a reply message to reply-to queue.
[Is restricted by a] maximum of 10 queues can be specified in the namelist. The program is only triggered if the loan amount requested is greater than 10,000 dollars.

(MQSeries 36.)

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003) (claims must be interpreted “in view of the specification” without importing limitations from the specification into the claims unnecessarily).

Although a patent applicant is entitled to be his or her own lexicographer of patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*, 347 F.2d 578, 580 (CCPA 1965). The applicant must do so by placing such definitions in the specification with sufficient clarity to provide a person of ordinary skill in the art with clear and precise notice of the meaning that is to be construed. *See also In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (although an inventor is free to define the specific terms used to describe the invention, this must be done with reasonable clarity, deliberateness, and precision; where an inventor chooses to give terms uncommon meanings, the inventor must set out any uncommon definition in some manner within the patent disclosure so as to give one of ordinary skill in the art notice of the change).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739 (citing *Graham*, 383 U.S. at 12), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be

obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740.

ANALYSIS

Initially, we note that the Appellants argue claims 21 and 42 together as a group. Correspondingly, we select representative claim 21 to decide the appeal of these claims. Remaining claims 23-31, 33-38, and 40, 41, 43-48 stand or fall with claim 21 since Appellants have not challenged such with any reasonable specificity (*see In re Nielson*, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)).

We begin our analysis by interpreting the language of the claims. At issue in this appeal is the meaning of the terms “simple or complex.” We refer to the Specification for guidance and find that a complex message is one which requires supervision and a simple one does not (Specification 40:8-9). Appellants give as an example of supervision sending a message to a messaging service agent 8 which “processes the message using, among

other criteria, the script/workflow data model rules 31, then directs the complex message along line 33 to second logical router 35.” (Specification 40:17-20.) Thus, we interpret “supervise” to be an additional set of commands which control the downstream processing of a message.

The Examiner argues that MVB2 teaches the capability for determining simple and complex messages because MVB2 responds to the inquiry from MVB1 either from batch processing or immediate delivery, and then sends a query to MVB3 or to MVB4 for further processing (FF 1).¹

Appellants argue that “[n]one of the MVB1 functions above disclose ‘determining whether the electronic message or request is simple or complex.’” (Appeal Br. 9.) We do not agree with Appellants because at MVB1 a determination is made as to whether the application is BATCH or non-BATCH (FF 3, 4). Thereafter, based on this determination, at other nodes, for example at MVB2, processing of the message will be handled differently if it is a BATCH message from one that is not. If it is a BATCH message, the resulting message requires supervision in the form of BATCH commands which govern the priority of routing the messages (FF 3). That is, MQSeries discloses that a determination is made between immediate or batch processing which means a series of requests (batch) are sent for

¹ The Examiner’s Answer maintains the same grounds of rejection as to all the rejections made under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) covering claims 21 and 23-52, but uses other reasoning as to how MQSeries is interpreted. The Examiner’s Answer references router MBV2 (FF1) determinations of BATCH or non-BATCH conditions, and not the functions of MVB4/5. Appellants did not file a Reply Brief in response to this reasoning, so we use only those points advanced by Appellants’ that are relevant to the Examiner’s reasoning using MBV2.

account and credit information and dealt with later in time (FF 2). Thus, as between BATCH versus immediate processing (non-BATCH), different reply to queue messaging occurs (FF 3). The messages shepherded through the system as BATCH are thus under the supervision of BATCH commands and are read as complex messages, leaving a non-BATCH message to be a read as simple messages.

Appellants also argue that

MQSeries does not disclose how the PS/2, MVS/ESA, AS/400, or the RS/6000 could perform the function of "determining whether the electronic message or request is simple or complex." Figure 11 does not distinguish between the types of messages being transmitted nor is that functionality disclosed elsewhere in the reference. Therefore, MQSeries does not disclose each and every element of claim 21 of the present application.

(Appeal Br. 7.)

We are not persuaded by Appellants' argument that MQSeries does not disclose a logical router which could perform the function of "determining whether the electronic message or request is simple or complex" because as found *supra* (FF 2, 3), MBV1 selects between immediate and batch processing by specifying a different reply-to queue in the inquiry message, and thus causes a system-wide distinction to be made (FF 5, 6) in messages as either BATCH or non-BATCH. As discussed *supra*, we interpret this distinction to be determined by the need to supervise the message, which controls whether the message is simple or complex.

As such, we sustain the rejection of claims 21, 23-31, 33-38, and 40-48 under U.S.C. § 102(b) as being unpatentable over MQSeries.

Appellants' argument as to claim 32 being improperly rejected under 35 U.S.C. § 103(a) merely restates the arguments for the dependent claim 21 on which it is based. As such, we sustain the rejection of claims 32 as well.

Likewise, Appellants' argument as to the allowability of independent claim 49 merely restates the arguments previously addressed in conjunction with independent claims 21 and 42. As such, we sustain the rejection of claims 49. We also affirm the rejections of dependent claims 39, and 50-52 since Appellants have not challenged such with any reasonable specificity.

CONCLUSIONS OF LAW

We conclude:

We affirm the rejection of claim 21, 23-31, 33-38, and 40-48 under U.S.C. § 102(b) as being unpatentable over MQSeries.

We affirm the rejection of claim 32 stands under 35 U.S.C. § 103(a) as being unpatentable over MQSeries in view of Richards.

We affirm the rejection of claims 39 and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over MQSeries in view of Yanai.

DECISION

The decision of the Examiner to reject claims 21 and 23-52 is
AFFIRMED.

Appeal 2007-3392
Application 09/737,754

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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